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13 CV 5077

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHKIE LEE
and PARAMAPORN TEPPAWAN,
on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

RESTAURANT ANDES, INC. d/b/a HANGAWI,
RYOON SEOCK CHOI, HYE JUNG HAHN
and JOAN [Last Name Unknown]
Defendants.

Case No.:

COMPLAINT

Jury Trial Demanded

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CASHIERS

Plaintiffs, JOHKIE LEE and PARAMAPORN TEPPAWAN, (hereinafter, "Plaintiffs"), on behalf of themselves and others similarly situated, by and through their undersigned attorney, hereby file this Complaint against Defendants, RESTAURANT ANDES, INC. d/b/a HANGAWI, RYOON SEOCK CHOI, HYE JUNG HAHN and JOAN [Last Name Unknown] (each individually, "Defendant" or, collectively, "Defendants"), and states as follows:

INTRODUCTION

1. Plaintiffs allege, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§201 *et. seq.* ("FLSA"), that they are entitled to recover from Defendants: (1) unpaid overtime, (2) unpaid minimum wages, (3) liquidated damages and (4) attorneys' fees and costs.

2. Plaintiffs further allege that, pursuant to the New York Labor Law, they are entitled to recover from Defendants: (1) unpaid overtime, (2) unpaid minimum wages, (3) unpaid spread of hours premium, (4) liquidated damages and statutory penalties and (5) attorneys' fees and costs.

3. Plaintiff JOHKIE LEE further alleges that he is entitled to damages caused by Defendants' willful discriminatory practices against him due to his sexual orientation.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this controversy pursuant to 29 U.S.C. §§206(d), 216(b), 28 U.S.C. §§1331, 1337 and 1343, and has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

5. Venue is proper in the Southern District pursuant to 28 U.S.C. §1391.

PARTIES

6. Plaintiff, JOHKIE LEE, is a resident of New York County, New York.

7. Plaintiff, PARAMAPORN TEPPAWAN, for all relevant time periods, was a resident of Nassau County, New York.

8. Upon information and belief, Defendant, RESTAURANT ANDES, INC., is a domestic business corporation organized under the laws of New York, with a principal place of business located at 12 EAST 32ND STREET, NEW YORK, NEW YORK, 10016.

9. Upon information and belief, Defendant, RYOON SEOCK CHOI, is the Chairman or Chief Executive Officer of Defendant, RESTAURANT ANDES, INC. RYOON SEOCK CHOI exercised control over the terms and conditions of Plaintiffs' employment and those of similarly situated employees. With respect to Plaintiffs and other similarly situated employees, he exercised his power to (i) fire and hire, (ii) determine rate and method of pay, (iii) determine employee schedules, and (iv) otherwise affect the quality of employment.

10. Upon information and belief, Defendant, HYE JUNG HAHN, is the Principal of Defendant, RESTAURANT ANDES, INC. HYE JUNG HAHN exercised control over the terms and conditions of Plaintiffs' employment and those of similarly situated employees. With respect to Plaintiffs and other similarly situated employees, she exercised her power to (i) fire and hire, (ii) determine rate and method of pay, (iii) determine employee schedules, and (iv) otherwise affect the quality of employment.

11. Upon information and belief, Defendant, JOAN [Last Name Unknown], is the General Manager of Defendant's restaurant, RESTAURANT ANDES, INC. d/b/a HANGAWI. JOAN [Last Name Unknown] exercised control over the terms and conditions of Plaintiffs' employment and those of similarly situated employees. With respect to Plaintiffs and other similarly situated employees, she exercised her power to (i) fire and hire, (ii) determine rate and method of pay, (iii) determine employee schedules, and (iv) otherwise affect the quality of employment. Plaintiff JOHKIE LEE and PARAMAPORN TEPPAWAN were hired directly by Defendant, JOAN [Last Name Unknown].

12. At all relevant times, Defendant, RESTAURANT ANDES, INC., was and continues to be an "enterprise engaged in commerce" within the meaning of the FLSA.

13. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by Defendants.

14. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs their lawfully earned overtime wages in direct contravention of the FLSA and the New York Labor Law.

15. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs their lawfully earned minimum wages in direct contravention of the FLSA and the New York Labor Law.

16. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs their lawfully earned "spread of hours" premium in direct contravention of the New York Labor Law.

17. Plaintiffs have fulfilled all conditions precedent to the institution of this action and/or such conditions have been waived.

STATEMENT OF FACTS

18. On or about August 1, 2012 Plaintiff, JOHKIE LEE, was hired by Defendants and/or their predecessors, as applicable, to work as a waiter for Defendants' restaurant located at 12 East 32nd Street, New York, New York 10016.

19. JOHKIE LEE worked for Defendants until on or about November 23, 2012.

20. During the employment of Plaintiff, JOHKIE LEE, by Defendants, he worked over forty (40) hours per week. During JOHKIE LEE's employment by Defendants, he often worked over ten (10) hours per day.

21. Specifically, JOHKIE LEE generally worked 5 days a week. Plaintiff, JOHKIE LEE, worked from 11:30 am to 11:00 pm for 3 days a week and from 5:00 pm to 12:00 am for 2 days a week. On the 3 days Plaintiff worked full time, Plaintiff would take a break from 3:00 pm to 5:00

pm. However, such break time was uncompensated and Plaintiff was required to remain on call at the restaurant to do side-jobs such as cleaning. JOHKIE LEE received his compensation on a salary basis, at a rate of $ 30 per day.

22. During Plaintiff JOHKIE LEE's employment with Defendants, Plaintiff suffered from discriminatory behavior and conduct from Defendants due to his sexual orientation. During Plaintiff JOHKIE LEE's training period, Defendant JOAN [Last Name Unknown] asked Plaintiff if he was gay. Although he was embarrassed by such improper question in the work place, Plaintiff Johkie Lee replied that he was gay. Thereafter, Defendant JOAN [Last Name Unknown] regularly made sexual remarks to Plaintiff JOHKIE LEE. When Plaintiff JOHKIE LEE inserted the receipts in the receipt box, JOAN [Last Name Unknown] said "Don't poke it too hard. Do it slowly. Don't hurt it. Sometimes you have to kiss it too." On another occasion when Plaintiff JOHKIE LEE was inserting the receipt into the receipt box, JOAN [Last Name Unknown] said "You have to be careful which hole you stick it in. Make sure you stick it in the right hole." Such remarks humiliated Plaintiff JOHKIE LEE and caused severe emotional distress.

23. Defendants directly discriminated against Plaintiff JOHKIE LEE by subjecting him to unequal pay due to his sexual orientation. Waiters who reached seniority by working at the restaurant for two or more months received 100 points in the tip pool. However, Plaintiff JOHKIE LEE only received 75 points. When Plaintiff JOHKIE LEE asked JOAN [Last Name Unknown] if he could get a raise in his points after being hired by Defendants for three months, JOAN [Last Name Unknown] simply refused to give Plaintiff JOHKIE LEE a raise. Instead, JOAN [Last Name Unkown] would humiliate Plaintiff JOHKIE LEE by asking him if he has a lot of sex.

24. Plaintiff JOHKIE LEE had no avenue to complain about Defendant JOAN [Last Name Unknown]'s discriminatory behavior. When employees complained about JOAN [Last Name Unknown] to Defendant RYOON SEOCK CHOI, he would just tell employees to resolve it with JOAN [Last Name Unknown] directly.

25. As a result of Defendants' failure to discipline JOAN [Last Name Unknown]'s discriminatory behavior and actions directed towards Plaintiff, Defendants fostered a work environment within HANGAWI that condoned such offensive and inappropriate behavior and created a workplace where homosexuals were treated with less respect or dignity than their heterosexual counterparts.

26. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer severe emotional distress. Plaintiff has visited and been diagnosed by a medical professional for tension and stress caused by the Defendants' discriminatory actions.

27. Defendants also discriminated against Plaintiff by failing to equally and fairly compensate Plaintiff for the work performed by him, as compared to the heterosexual employees of Defendants who performed the same or similar job functions. Despite performing the same job functions to his heterosexual counterparts at HANGAWI and having the same or similar job titles, Defendants repeatedly and systematically compensated Plaintiff less than his heterosexual co-workers. This inequality in compensation between Plaintiff and the heterosexual employees of HANWAGI constitutes discrimination against Plaintiff on the basis of his sexual orientation by Defendants.

28. In or about November 2010, Plaintiff, PARAMAPORN TEPPAWAN, was hired by Defendants and/or their predecessors, as applicable, to work as a waitress for Defendants' restaurant located at 12 East 32nd Street, New York, New York 10016.

29. PARAMAPORN TEPPAWAN worked for Defendants until in or about August 2012.

30. During the employment of Plaintiff, PARAMAPORN TEPPAWAN, by Defendants, she worked over forty (40) hours per week. During PARAMAPORN TEPPAWAN's employment by Defendants, she often worked over ten (10) hours per day.

31. Specifically, PARAMAPORN TEPPAWAN generally worked 5 days a week. Plaintiff, PARAMAPORN TEPPAWAN, worked from 11:00 am to 10:30 pm for 3 days a week and from 11:30 am to 11:30 pm for 2 days a week. Plaintiff TEPPAWAN would take a break from 3:00 pm to 5:00 pm. However, such break time was uncompensated and Plaintiff was required to remain on call at the restaurant to do side-jobs such as cleaning. Plaintiff TEPPAWAN received her compensation on a salary basis, at a rate of $ 30 per day.

32. Defendants knowingly and willfully operated their business with a policy of not paying either the FLSA overtime rate (of time and one-half) or the New York State overtime rate (of time and one-half) to the Plaintiffs and other similarly situated employees.

33. Defendants knowingly and willfully operated their business with a policy of not paying either the FLSA minimum wage or the New York State minimum wage to the Plaintiffs.

34. Defendants knowingly and willfully operated their business with a policy of not paying the New York State "spread of hours" premium to Plaintiffs.

35. Defendants knowingly and willfully operated their business with a policy of not providing proper wage statements or wage and hour notices to Plaintiffs and other similarly situated employees, in violation of the New York Labor Law. In fact, Plaintiffs did not receive any wage statements or wage and hour notices during their period of employment with Defendants.

36. Defendants took an improper tip credit with respect to Plaintiffs and all other tipped

employees of the Defendants given Defendants' failure to: (i) provide proper notice to employees of their tipped credit minimum wage rate and the proper overtime rate thereon, (ii) maintain records of tips earned by employees, (iii) maintain a proper tip pool because management participated in the tip pool and (iv) provide proper wage statements to employees showing deductions, as required under New York State law. Defendant JOAN [Last Name Unknown] retained approximately 17% of tips generated by tipped employees although she did not service customers.

37. Defendants knowingly and willfully operated their business with a policy of discriminating against employees who were homosexuals by subjecting them to unequal pay policy and hostile work environment.

38. Plaintiffs retained Lee Litigation Group, PLLC to represent them and other employees similarly situated in this litigation and have agreed to pay the firm a reasonable fee for its services.

STATEMENT OF CLAIM

COUNT I

VIOLATION OF THE FAIR LABOR STANDARDS ACT

39. Plaintiffs reallege and reaver Paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. At all relevant times, upon information and belief, Defendants were and continue to be employers engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a). Further, Plaintiffs are covered individuals within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

41. At all relevant times, Defendants employed Plaintiffs within the meaning of the FLSA.

42. Upon information and belief, at all relevant times, Defendant, RESTAURANT ANDES, INC., had gross revenues in excess of $500,000.

43. At all relevant times, the Defendants had a policy and practice of refusing to pay overtime compensation at the statutory rate of time and one-half to Plaintiffs for their hours worked in excess of forty hours per workweek.

44. Defendants failed to pay Plaintiffs overtime compensation in the lawful amount for hours worked in excess of the maximum hours provided for in the FLSA.

45. Plaintiffs worked hours for which they were not paid the statutory minimum wage.

46. At all relevant times, the Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiffs for their hours worked.

47. Defendants failed to pay Plaintiffs minimum wages in the lawful amount for their hours worked.

48. Records, if any, concerning the number of hours worked by Plaintiffs and the actual compensation paid to Plaintiffs are in the possession and custody of the Defendants. Plaintiffs intend to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, will then seek leave of Court to amend this Complaint to set forth the precise amount due.

49. Defendants knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by their failure to compensate Plaintiffs at the statutory rate of time and one-half for their hours worked in excess of forty (40) hours per week when Defendants knew or should have known such was due.

50. Defendants knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiffs the minimum wages for hours worked when Defendants knew or should have known such was due.

51. Defendants failed to properly disclose or apprise Plaintiffs of their rights under the FLSA.

52. As a direct and proximate result of Defendants' willful disregard of the FLSA, Plaintiffs are entitled to liquidated damages pursuant to the FLSA.

53. Due to the intentional, willful and unlawful acts of Defendants, Plaintiffs suffered damages in an amount not presently ascertainable of unpaid overtime wages and unpaid minimum wages, plus an equal amount as liquidated damages.

54. Plaintiffs are entitled to an award of their reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

COUNT II

VIOLATION OF THE NEW YORK LABOR LAW

55. Plaintiffs reallege and reaver Paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. At all relevant times, Plaintiffs were employed by the Defendants within the meaning of the New York Labor Law, §§2 and 651.

57. Defendants willfully violated Plaintiffs' rights by failing to pay Plaintiffs overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

58. Defendants willfully violated Plaintiffs' rights by failing to pay Plaintiffs minimum wages in the lawful amount for hours worked.

59. Defendants willfully violated Plaintiffs' rights by failing to pay "spread of hours" premium to Plaintiffs for each day they worked ten (10) or more hours.

60. Defendants knowingly and willfully operated their business with a policy of not providing proper wage statements or wage and hour notices to Plaintiffs and other similarly situated employees, in violation of the New York Labor Law.

61. Defendants willfully violated Plaintiffs' rights by paying them on a salary basis, in violation of the New York Labor Law because Plaintiffs are non-exempt employees who must not be paid on a salary basis.

62. Due to the Defendants' New York Labor Law violations, Plaintiffs are entitled to recover from Defendants their unpaid overtime, unpaid minimum wages, unpaid "spread of hours" premium, statutory penalties, damages for unreasonably delayed payments, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law §663(1).

COUNT III

VIOLATION OF THE EQUAL PAY ACT

63. Plaintiff JOHKIE LEE realleges and reavers Paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. The Equal Pay Act, as set forth in the FLSA, prohibits employers from compensating homosexual employees less than heterosexual employees for jobs that require substantially equal work.

65. Defendants as described above, employed Plaintiff, a homosexual employee, and heterosexual employees in jobs requiring substantially equal skill, effort and responsibility.

66. The jobs performed by Plaintiff and heterosexual employees were performed under similar working conditions.

67. Defendants compensated Plaintiff with a lower wage than the heterosexual employees doing substantially equal work.

68. As a direct and proximate result of Defendants' discriminatory conduct in violation of the Equal Pay Act of the FLSA, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of compensation and benefits for which he is entitled to an award of monetary damages and other relief.

69. As a direct and proximate result of Defendants' discriminatory conduct in violation of the Equal Pay Act of the FLSA, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

COUNT IV

DISCRIMINATION AND HARASSMENT IN VIOLATION OF THE NYSHRL

70. Plaintiff JOHKIE LEE realleges and reavers Paragraphs 1 through 69 of this Complaint as if fully set forth herein.

71. The NYSHRL prohibits discrimination in the terms, conditions and privileges of employment on the basis of an individual's sexual orientation.

72. Plaintiff is an employee within the meaning of the NYSHRL and Defendants are covered employers under the NYSHRL.

73. Defendants discriminated against Plaintiff, as described more fully above, in violation of the NYSHRL by subjecting Plaintiff to a hostile work environment, in the form of sexual harassment, which was severe or pervasive.

74. As a direct and proximate result of Defendants' discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to compensation and benefits for which he is entitled to an award of monetary damages and other relief.

COUNT V

DISCRIMINATION AND HARASSMENT IN VIOLATION OF THE NYCHRL

75. Plaintiff JOHKIE LEE realleges and reavers Paragraphs 1 through 74 of this Complaint as if fully set forth herein.

76. The NYCHRL prohibits discrimination in the terms, conditions and privileges of employment on the basis of an individual's sexual orientation.

77. Plaintiff is an employee within the meaning of the NYCHRL and Defendants are covered employers under the NYCHRL.

78. Defendants discriminated against Plaintiff, as described more fully above, in violation of the NYCHRL by subjecting Plaintiff to a hostile work environment.

79. As a direct and proximate result of Defendants' discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of compensation and benefits of which he is entitled to an award of monetary damages and other relief.

80. As a direct and proximate result of Defendants' discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer severe mental anguish and emotional

distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

COUNT VI

DISCRIMINATION AND UNEQUAL PAY IN VIOLATION OF THE NYSHRL AND THE NYCHRL

81. Plaintiff JOHKIE LEE realleges and reavers Paragraphs 1 through 80 of this Complaint as if fully set forth herein.

82. The NYSHRL prohibits discrimination in the terms, conditions and privileges of employment on the basis of an individual's sexual orientation.

83. The NYCHRL prohibits discrimination in the terms, conditions and privileges of employment on the basis of an individual's sexual orientation.

84. Plaintiff is an employee within the meaning of the NYSHRL and the NYCHRL. Defendants are covered employers under the NYSHRL and the NYCHRL.

85. Defendants, as described above, discriminated against Plaintiff in violation of the NYSHRL and the NYCHRL by paying Plaintiff, a homosexual employee, and unequal and unfair wage, as compared to the heterosexual employees of HANGAWI, who performed substantially similar work as Plaintiff. Such discrimination was systematic and pervasive.

86. As a direct and proximate result of Defendants' discriminatory conduct in violation of the NYSHRL and the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of future income, compensation and benefits for which she is entitled to an award of monetary damages and other relief.

87. As a direct and proximate result of Defendants' discriminatory conduct in violation of the NYSHRL and the NYCHRL, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and all similarly situated employees, respectfully request that this Court grant the following relief:

a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

b. An injunction against Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

c. An award of unpaid overtime compensation due under the FLSA and the New York Labor Law;

d. An award of unpaid minimum wages due under the FLSA and the New York Labor Law;

e. An award of unpaid "spread of hours" premium due under the New York Labor Law;

f. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay overtime compensation and minimum wages pursuant to 29 U.S.C. § 216;

g. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay overtime compensation, minimum wages and "spread of hours" premium pursuant to the New York Labor Law;

h. An award of economic damages, special and general pecuniary loss, and all other damages owed in an amount proven at trial, resulting from Defendants' unlawful and discriminatory acts or omissions;

h. An award of statutory penalties, and prejudgment and postjudgment interest;

i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

j. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury on all issues so triable as of right by jury.

Dated: July 22, 2013

Respectfully submitted,

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